

Service Date: February 19, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Public Service)	UTILITY DIVISION
Commission's Investigation into Montana-)	
Dakota Utilities Company's Implementation)	DOCKET NO. D99.2.29
of Universal Systems Benefits Programs)	
Pursuant to Section 69-8-402, MCA.)	ORDER NO. 6143

ORDER DIRECTING UNIVERSAL SYSTEM BENEFITS COMPLIANCE

Background

1. The 1997 Montana State Legislature passed Senate Bill 390, "Electricity Utility Industry Restructuring and Customer Choice Act," effective May 2, 1997 and codified at Title 69, Chapter 8, Montana Code Annotated (MCA). Senate Bill 390 provided for a transition period, or phase-in, to choice of electricity supply by July 1, 2004, with an extension to July 1, 2006 for Montana-Dakota Utilities (MDU). § 69-8-201, MCA.

2. MDU, as a public utility, has been subject to the jurisdiction of the Montana Public Service Commission (Commission) pursuant to Title 69, Chapter 3, MCA. MDU will remain subject to the Commission's jurisdiction during and after the transition period under both Chapters 3 and 8. Utilities, including MDU, have obligations during the transition period, most of which are not relevant to this Docket. The obligation relevant to this Order was phased-in by Senate Bill 390: MDU must implement universal system benefits programs (USBP) and recover the costs for these programs, beginning January 1, 1999, through imposition of a universal system benefits charge (USBC) assessed at the meter for each public utility customer. This obligation is independent of the obligation of the utility to file a transition plan.

Findings and Discussion

3. Because law mandates the funding for USBC programs, beginning January 1, 1999, MDU has the obligation to demonstrate how it will fund these programs. MDU may file an appropriate USBC tariff for the Commission's approval and to begin imposing this charge, as directed by the Commission. Pursuant to § 69-3-301, MCA, a public utility has the obligation to

file appropriate tariffed schedules with the Commission for its approval, showing rates and charges before it can begin collecting the charges.

4. Section 69-8-402, MCA requires each Montana utility to fund universal system benefits programs at an annual level equal to 2.4 percent of the utility's 1995 retail sales revenue. Annual funding at this level was required beginning January 1, 1999. Utilities may recover costs associated with implementing universal system benefits programs at the required level by collecting universal system benefits charges (USBC) from their customers.

5. The Commission finds that Constitutional Initiative 75 (CI-75), if still in effect after the appeal to the Montana Supreme Court, does not affect the Commission's authority to approve a USBC tariff. In Order No. 5986f, Montana Power Company Docket No. D97.7.90, the Commission addressed the question of application of Article VIII, Section 17 of the Montana State Constitution to implementation of the USBC on January 1, 1999. This constitutional provision, requiring a vote of the electorate before any new taxes may be implemented, was effective November 3, 1998, upon passage of CI-75. The Commission determined that May 2, 1997, the effective date of enactment of § 69-8-402, MCA is the controlling date, which establishes universal system benefits obligations under the law.

6. MDU has not formally notified the Commission of how it plans to comply with the universal system benefits programs requirements in § 69-8-402, MCA.

7. Based on MDU's 1995 Annual Report to the Commission, MDU is required to fund universal system benefits programs at an annual amount equal to about \$675,800. As a public utility regulated by the Commission, MDU must obtain Commission approval to implement rates that will recover the amount of its universal system benefits obligation. Unless MDU can otherwise show how it will fund the Company's universal system benefits obligation, MDU is in violation of § 69-8-402, MCA.

Decision

8. MDU must submit a report to the Commission on or before March 19, 1999, describing the status of its universal system benefits programs, including funding sources and mechanisms. If it chooses to file proposed tariffs for Commission approval, MDU must submit work papers and billing determinants that will implement universal system benefits charges sufficient to fund programs at the required level.

Conclusions of Law

9. The Commission supervises public utilities and regulates the rates, charges and services of public utilities pursuant to Title 69, Chapter 3, MCA. § 69-3-102, MCA.

10. The Commission has the general power to do all things necessary and convenient in the exercise of its powers conferred by Title 69, Chapter 3, MCA and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before the Commission. § 69-3-103, MCA.

11. A public utility must file all rates, tolls and charges with the Commission for its approval in compliance with § 69-3-301, MCA.

12. The Commission may on its own motion investigate rates, tolls, charges, practices and services and, following the opportunity for a hearing, may order just and reasonable changes. § 69-3-324, MCA.

13. In 1997, the Montana Legislature passed Senate Bill 390, "Electricity Utility Industry Restructuring and Customer Choice Act," codified at Title 69, Chapter 8, MCA. Senate Bill 390 provides for transition from full regulation of vertically integrated public utilities to deregulation of electricity supply so that customers can choose their suppliers in a competitive market. The Commission will continue to regulate distribution and transmission charges of the public utilities pursuant to its authority in Title 69. § 69-8-403, MCA.

14. Montana-Dakota Utilities is a public utility subject to the Commission's jurisdiction in Title 69, Chapters 3 and 8, MCA. §§ 69-3-101 and 69-8-103(17), MCA.

15. Pursuant to Senate Bill 390, the 1997 Legislature established universal system benefits programs "to ensure *continued funding of and new expenditures for* energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future." § 69-8-402(1), MCA. (Italics supplied.) The Legislature established the funding level for these programs at 2.4 percent of "each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995," to remain in effect until July 1, 2003. § 69-8-402(2), MCA. As part of the transition of the regulated electric utility industry to competition of electricity supply, the legislature instituted these programs to be funded at this level beginning January 1, 1999, to be recovered through a universal systems benefits charge (denominated USBC) assessed at the meter for each local utility customer. § 69-8-402(2)(a), MCA.

16. As a matter of law, MDU, a public utility subject to the Commission's jurisdiction, has the right to file a USBC tariff for approval which will recover an amount equivalent to 2.4 percent of its annual revenues for the year ending December 31, 1995. By legislative fiat in Senate Bill 390, effective May 2, 1997 and preceding the vote on the Constitutional Initiative 75 in November, 1998, MDU had the right to file this USBC tariff for imposition and collection effective beginning January 1, 1999.

ORDER

On its own motion, the Commission institutes this Docket to bring MDU before the Commission with a filing of a report on or before March 19, 1999, demonstrating its compliance with § 69-8-402, MCA, as set forth in this Order. With this report, MDU may submit a proposed USBC tariff for approval in compliance with Title 69, Chapter 8, MCA. The Commission will conduct this proceeding as a contested case, with an opportunity for intervention, a procedural schedule and a public hearing, if requested by parties.

DONE AND DATED this 18th day of February, 1999 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.